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IN THE

Supreme Court of the United States

October Term, 1969
No. 366

CARL W. SPAHR and WILLIAM A. KAISER,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL BRIEF OF PETITIONERS.

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Petitioners herein file a Supplemental Brief pursuant to Rule 24(5) of the Supreme Court Rules, in order to call attention to new cases not available at the time of the filing of the Petition.

At page 18 of the Petition, Petitioners stated that no Court of Appeals had yet expressly applied the case of *Miranda v. State of Arizona* (1966), 384 U.S. 436, 86 S. Ct. 1602, to an investigatee in a criminal income tax investigation. Petitioners did point out that many District Courts have done so, in some instances contrary to the rulings of the Court of Appeals in the Circuits in which they were sitting.

The United States Court of Appeals for the Seventh Circuit issued opinions in three cases on July 16 and July 28, 1969, which decisions conflict with the deci-

sions of other Courts of Appeal on the same matter. See Brief for the United States in Opposition, pages 3 and 4.

In *United States v. Lackey,* decided July 16, 1969, 24 AFTR 2d 69-5177, the Court of Appeals for the Seventh Circuit affirmed an Order of the District Court suppressing the transcript of an oral interview, the inventories of two safe deposit boxes, and the bank statements and cancelled checks from a bank account obtained on the same date. The District Court had held that an interview in the basement of the Monticello Post Office Building of three hours' duration was custodial in nature.

The above rule was expanded substantially in *United States v. Dickerson,* decided by the Court of Appeals for the Seventh Circuit on July 28, 1969, 24 AFTR 2d 69-5316. The lower Court had entered an Order suppressing evidence obtained from the Defendant during the criminal tax investigation and before his retention of counsel. The Appellant Court affirmed. The opinion dwells at length on the policy underlying the *Miranda* decision, and the cases that have since failed to apply the *Miranda* doctrine to a criminal tax investigation. The Court notes that many distinctions cannot survive this Court's decision in *Mathis v. United States,* 391 U.S. 1, 88 S. Ct. 1503. We quote liberally below from the Appellate Court decision:

> "We recognize the factual limitations of the precise holding in *Miranda.* On the other hand, we cannot accept an interpretation of that decision

which would restrict the implementation of the Court's overriding concern with the opportunity for intelligent exercise of Constitutional rights to interrogations conducted in police stations. . . . The Government's brief appears to recognize that ignorant compliance with the requests of the authorities can no longer be equated with a valid waiver of constitutional rights. We understand the teaching of *Miranda* to be that one confronted with governmental authority in an adversary situation should be accorded the opportunity to make an intelligent decision as to the assertion or relinquishment of those constitutional rights designed to protect him under precisely such circumstances. No contention is made that the privilege against self-incrimination does not protect one interrogated in a non-custodial setting, only that one in such circumstances has no need of advice as to his rights, or, indeed, of the pendency of a criminal investigation at all. But custodial interrogation is merely one variety of confrontation, albeit one requiring the most stringent of protections for the criminal suspect. The inquiry does not end with custody or its absence. . . . The Government argues that the absence of custodial detention and other indicia of criminal prosecution in the tax fraud investigation negatives any possibility of coercion or overbearing of the taxpayer's will. But it is the very fact that the taxpayer is not informed of the pendency of a criminal investigation which aggravates the dilemma in which he finds himself. Unaware of the possible consequences of his cooperation with the agents, he may nevertheless be-

lieve that he is obligated to supply the necessary information in order to satisfy any possible tax deficiency which he may owe. . . . Only the rare taxpayer would be likely to know he could refuse to produce his records to IRS agents. Nor would he be likely to make any distinction between revenue agents and special agents without some examination as to the different functions of these two offices. . . . Incriminating statements elicited in reliance upon the taxpayer's misapprehension as to the nature of the inquiry, his obligation to respond, and the possible consequences of doing so must be regarded as equally violative of constitutional protection as a custodial confession extracted without proper warnings. . . . Under such circumstances, it is imperative that the taxpayer be advised that he is the subject of a criminal investigation and that he need not answer questions put to him by the agents. . . . Our conclusion is that *Miranda* warnings *must be given to the taxpayer by either the revenue agent or the special agent at the inception of the first contact with the taxpayer after the case has been transferred to the Intelligence Division.* We have reached this conclusion on the basis of our examination of the circumstances surrounding criminal tax investigations generally, and we find that the objective circumstances of such confrontations with government authority warrant the above warnings without regard to the individual taxpayer's subjective state of mind. Absent such warnings, the motion to suppress in the present case was properly granted. . . ." (Emphasis added).

In *United States v. Habig,* also decided by the Court of Appeals for the Seventh Circuit on July 28, 1969, 24 AFTR 2d 69-5313, the District Court granted the defendant's motion to suppress the records of *five corporations* that were photocopied by agents of the Internal Revenue Service during the investigation of possible criminal violations of the Internal Revenue Code. It was clear that the records which were photocopied were obtained without a search warrant, summons or subpoena. The essential point of dispute, and the issue on which the District Court's finding of fact turned, was whether the consent was vitiated when the purpose of the investigation shifted from civil to criminal.

The record in *Habig* was unclear in that the trial court did not adequately ascertain whether the records introduced in evidence were received by the Government prior to or subsequent to referral of the case to the Intelligence Division. The Order to suppress was therefore vacated and the case was remanded to the trial court for further hearing to develop facts necessary to the application of the standards announced in *Dickerson, supra.*

The rule of law set forth in *United States v. Dickerson, supra,* is directly in point in the case at Bar, and the general rule has been extended by the holding in *United States v. Habig, supra,* to a corporate officer who unknowingly furnishes corporate records without the compulsion of a search warrant, summons, or subpoena. Petitioners argue in the Petition that the issues

in this case should be decided by this Honorable Court in order to accurately apprize Government agents, taxpayers, and the Bar of the rights of an investigatee in a criminal income tax investigation. Conflict between the Courts of Appeal adds further weight to this argument.

Petitioners respectfully request that the Petition be granted so that the Court may consider these important questions of law.

Respectfully submitted,

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